

MEETING MINUTES (FINAL)

HABITAT CONSERVATION PLAN Technical Advisory Committee Wednesday, September 5, 2007, 1pm to 3pm Arizona Game and Fish Department Tucson, Arizona

ATTENDEES

City of Tucson (COT) Habitat Conservation Plan (HCP) Technical Advisory Committee (TAC) members present:

Rich Glinski (Arizona Game and Fish Department-*retired*)
Dennis Abbate (Arizona Game and Fish Department)
Ralph Marra (Tucson Water Department)
Trevor Hare (Coalition for Sonoran Desert Protection)
Guy McPherson (University of Arizona)
Marit Alanan (US Fish & Wildlife Service)

Other Attendees present:

Leslie Liberti, (City of Tucson – Office of Conservation and Sustainable Development)
Ann Audrey (City of Tucson – Office of Conservation and Sustainable Development)
Jamie Brown (City of Tucson – Office of Conservation and Sustainable Development)
David Jacobs (Arizona Attorney General’s Office - Arizona State Land Department),

1. Minutes

None to review at this time.

2. Updates

Introduction of Jamie Brown, new COT Office of Conservation and Sustainable Development (OCSD) Environmental Planner.

Buffelgrass

Buffelgrass is being sprayed with herbicide on City holdings in Avra Valley, with 1,200 acres completed to date. Trevor noted that the Bureau of Land Management (BLM) Managers have released the “Final Vegetation Treatments Using Herbicides Programmatic Environmental Impact Statement (PEIS),” which details plans and potential impacts, national in scope, regarding treatments to help eradicate invasive species on BLM land in 17 western states. This document may contain useful information about the BLM’s rationale for the herbicides it plans to use, which may help with the TAC’s decision-making process for invasive species eradication as part of the HCP.

[Action item: OCSD staff get a copy of Environmental Impact Statement (EIS) and draft plan.]

SDCP Monitoring

Brian Powell has taken the role of monitoring manager of the Sonoran Desert Conservation Plan (SDCP) at Pima County. He is interested in working collaboratively with both the COT HCP TAC and the Town of Marana's HCP Technical Biology Team (TBT). He would like to address the joint meeting between the two technical groups.

Joint City of Tucson/Marana/ HCP TAC/TBT meeting

For the upcoming joint meeting, overviews of the planning process will be presented by the COT TAC and the Town of Marana TBT, followed by a group discussion of each species and how the respective HCPs will address their needs. In particular, results of the discussion may determine that Burrowing Owl Management Areas (BOMAs) might be best handled as a joint effort. Following this meeting, Brian Powell may address the group at 12:30 or 12:45 p.m. regarding the SDCP. After Brian speaks, the COT TAC will meet as usual, which will include a discussion of the Southlands planning sub-area.

Arizona State Land Department and the COT HCP

Cheryl Doyle, with the Arizona State Land Department, is attending the Marana HCP TBT meetings and may eventually be coming down to work out of the Tucson office.

Lesser Long-nosed Bat (LLNB)

Dennis mentioned that during the week of August 21, the Arizona Game and Fish Dept. (AGFD) captured LLNB on the east side of Tucson at a hummingbird feeder near Saguaro National Park East. Two of the three that were captured were juveniles. The adult was fitted with a radio transmitter. This individual was then tracked for five nights. During this time, it stayed within a small geographical area, probably roosting in the vicinity of Colossal Cave. There were no indications it was using the Southlands planning sub-area for its habitat needs during this tracking period. Given that the Endangered LLNB is in the area, AGFD is hoping to get more reports of sightings and do more tracking. Foraging and feeding patterns of the LLNB may vary from previous years because of this year's abundant monsoon rains and corresponding fruit and nectar production. Trapping near roosts is one option if bats do not come into feeders. AGFD's preference is to catch bats at feeders within the COT HCP planning area.

Court Decision on "No Surprises" Rule

Leslie updated the group regarding the Spirit of the Sage Council's court challenge to the "No Surprises" Rule of the Endangered Species Act (ESA). With the No Surprises Rule, the terms of the HCP still stand and the permittee cannot be required to invest substantially more funds in conservation effort regardless of changes in species status. In terms of the legal challenge, the court agreed that the FWS did not properly adhere to the Administrative Procedures Act and so it has since performed the necessary work to comply. Thus, last week, Federal District Court Judge Sullivan ruled the No Surprises Rule language does stand (Spirit of the Sage Council, et. al v. Dirk Kempthorne, Secretary of the Dept. of Interior, et. al.). Trevor noted that the Sonoran Desert Conservation Plan (SDCP) dealt with the long-term uncertainty of species protection under the "No Surprises" rule by designing a system that would help recover species, even though this is not required by the ESA. It is important in planning to address the range of contingencies to which species described in the HCP could be exposed. Leslie

said the COT HCP will include a section on Changed and Unforeseen Circumstances to address a range of possible impacts, including massive drought, climate change, etc.

Comment: The question was asked about whether Judge Sullivan's ruling could be appealed? In other words, was the ruling final or is it potentially just another step in the legal process? David Jacobs responded to the question at the meeting and both the question and his response should be reflected in the meeting summary. This is an important issue.

Ephemeral watercourse jurisdiction under Clean Water Act (CWA), Section 404

Trevor noted that the Environmental Protection Agency (EPA) and Army Corps of Engineers (COE) issued guidance dated June 5, 2007, about the applicability of CWA Section 404 to ephemeral watercourses. Based on a cursory review of the guidance, it appears that the guidelines are still general and allow local discretion in the jurisdictional delineations. *[Action items: Ralph requested that the City Attorney's office review this guidance to understand its implications for arid ephemeral watercourses, in particular the level of discretion which local jurisdictions have in making decisions. Trevor will send the link for this to the group.]*

3. Avra Valley Discussion - Conservation Strategies

Leslie initiated the discussion by distributing a map of Conservation Priority Areas (CPAs) along with an associated table of acreages, showing there are approximately 5,400 acres of CPA in the Avra Valley planning sub-area. She reviewed the rationale discussed in detail in earlier meetings about approaches to conservation and mitigation. She noted that the existing concept would not preclude 100% disturbance of CPA on any given parcel.

Based on discussions between Leslie and Scott Richardson, Leslie showed an alternative concept that would more closely mirror the City's watercourse protection ordinances, by designating "No Touch" areas composed of the riparian vegetation within the CPA. (Comment: "No touch" areas can be touched as per the discussion. Should that be made clear here up front?) These "No Touch" areas would be smaller than the CPA areas around washes, since the CPA areas include both the riparian canopy and a buffer area around it. The blue and pink envelopes developed on earlier maps were determined based on factors such as adjacency, land condition, likely movement corridors, and other factors, that provide a rationale for level of protection. *[Action item: OCSD assemble the rationale for the selection of land conservation levels from previous meeting notes]*

Trevor noted that elements inside the CPA (pink area) such as stock tanks, large-sized trees, drainage ditches that contain water, etc. also need guaranteed protection. Leslie said the "No Touch" area (blue area) was intended to be a minimum look at what is absolutely necessary, but still allow some flexibility. She noted that the City's Interim Watercourse Protection Development Standard allows flexibility for road and utility crossings across washes.

Trevor suggested using the percentage of natural vegetation versus bare ground as a threshold. For example, if a site contained 50% natural vegetation, that site might be protected more than sites with a lower percent of natural vegetation.

In terms of faunal species covered by the HCP, Leslie noted that 75% to 100% of habitat for the Western Yellow-billed Cuckoo (YBC), Cactus Ferruginous Pygmy-owl (CFPO), Pale Townsend's Big-eared Bat (PTBB), and Tucson Shovel-nosed Snake (TSS) are protected with the Conservation Priority Areas (CPAs). Only the Burrowing Owl (BUOW) and the Ground Snake (GS) are not as well protected by the CPA. The GS is not likely to receive Federal protection, according to Phil Rosen, UA herpetologist. The BUOW uses a much broader habitat base than the focused riparian corridors and movement corridors mapped to date.

In terms of potential future impacts by Tucson Water infrastructure activities, Leslie noted two categories and levels of encroachment:

- Minimal encroachment: wells, pipelines and roads, with minimal requirements for restoration such as on-site revegetation.
- Major encroachments: evaporation ponds, recharge basins, treatment plants, and solar arrays would require more extensive mitigation

Ralph wanted to confirm that mapped corridors are assumed potential biological corridors, which the group confirmed. Leslie observed that if Tucson Water projects involve construction outside the CPA, this would protect everything except BUOW and biological corridors. Mitigation could include protection of the corridor area and other specific mitigation or restoration efforts that addressed BUOW and corridor needs. If Tucson Water projects involve construction inside the CPA, there could be two possibilities:

- For minimal encroachments inside the CPA, there would be some flexibility in how to deal with this.
- For major encroachments inside the CPA, the blue could be considered a "No Touch" zone as a means to protect habitat deemed most critical.

Trevor referenced the classic conservation debate of which is better for habitat protection -- a single, large area or multiple, small areas (SLOSS). Leslie pointed out that there are a limited number of parcels and a limited number of high quality habitat areas, so it is important to protect what is most critical. Given the total number of City-owned acres in the Avra Valley planning sub-area (over 20,000 acres), the approximately 5,400 acres of CPA, and the projection of a maximum of 7,000 acres of encroachment by the City, it may be that encroachment never occurs in the CPA, but that isn't knowable at this time.

Tucson Water activities are only one factor in Avra Valley's future. Future Arizona Department of Transportation (ADOT) projects could have a major impact on land use and development in the area. Impacts to wildlife from such activities would likely be tracked through AGFD transmitter studies and Regional Transportation Authority (RTA) wildlife linkages studies along Ajo Highway. The Changed and Unforeseen

Circumstances section of the HCP would address the City's need to provide information to ADOT in order to help make habitat conservation and road development compatible. Trevor brought up a potential I-10 bypass to run north/south through Avra Valley. Leslie noted the San Xavier Nation would likely not allow the corridor to run along the eastern boundary of the reservation (Comment: This would most certainly be true if the bypass were to go through the San Xavier Nation. The thought at the meeting was that the bypass alternative ran south of the District on an east-west alignment and then turned north near its western boundary. Would the Nation have any authority if the bypass was located off reservation?). The City of Tucson would also weigh in on locations. Trevor said mitigation might include ponds, wildlife-friendly fencing, reduced nighttime lighting, buffering of protected areas with vegetation, and/or invasive species eradication.

In continued discussion of conservation approaches, two options were presented for consideration:

- Allowing minimal encroachment into the riparian ribbon, per the City's interim development standard for watercourse protection (DS 2-13 Floodplain, Wash and Environmental Resource Zone Standard).
- Developing a minimum/maximum ratio approach that is not species-specific, where mitigation for encroachment would occur on the subject property.

Trevor suggested using the Pima County Conservation Land System (CLS) as a baseline for determining allowed encroachment. In this case, 95% of land is protected and 5% encroachment is allowed in the "No Touch" zones (Pima County's Important Riparian Areas), or if it occurs in the CPA (for Pima County, these are the Biological Core Management Areas) 80% of land is protected and 20% encroachment is allowed. Leslie observed that these protection ratios exceed the mitigation ratios required for all the Avra Valley species, and Avra Valley land is not comparable to high quality lands in Pima County. Trevor contended the protection should be higher than minimum protection.

Rich noted that HCP-based protection would be in addition to any watercourse protection required under CWA Section 404. This could result in increased land protection if both the HCP and CWA Section 404 mitigation occurs in the area. It would be beneficial to get multiple functions out of Tucson Water projects that could include water features for wildlife and trees on the borders of the recharge basins, among others.

Trevor noted the mitigation ratio for the CFPO is 4:1 for breeding habitat. In Trevor's opinion, this 4:1 ratio is not an onerous ratio to meet, and likely should be applied to the CPA, in part because the mitigation ratio helps deter encroachment. He felt that while it is not in Tucson Water's interest to impact these areas at this time, the HCP is a long-term planning document, and should be crafted to anticipate possible changing political and departmental cultures in the long term. Leslie reviewed mitigation acreage ratios that were previously developed for possible use in the Avra Valley. These ranged from 2:1 to 4:1 depending on the species. Trevor suggested averaging the mitigation ratios for the species involved to get a parcel-specific mitigation ratio based on the range of species found there. Leslie noted the City's watercourse protection allows encroachment for road crossings and utility crossings, with mitigation required at 2:1 or 3:1 ratios for lost plants.

In terms of the type of minimal impacts that might occur, Tucson Water typically installs pipelines underground. Road crossings across watercourses might be dips, or might have culverts installed under the roadbed. If culverts are installed, they should be wildlife sensitive. Well sites typically cover an area 100 feet by 100 feet, which allows for vehicle maneuvering and well maintenance activities. Very little if any of a well-site area is paved but active well sites are always fenced. Heavily used roads to well sites are often surfaced with gravel, with road easements being necessary for access. Lighting is not typically installed but this may not always be the case. *[Action item: Ralph research lighting at well sites. Comment: The well sites do not need to be lit during the night...RM.]*

Mitigation for these minimal impacts could include revegetation, raptor anti-electrification devices, preventing non-native invasive plants from colonizing or spreading along the road, grading dirt roads as Pima County does to harvest water and reduce erosion, per principles from Bill Zeedyk's manual entitled "Water Harvesting from Low-Standard Rural Roads," and others. *[Action item: OCSD find Zeedyk's manual, and check with Pima County to discuss their experiences with grading roads using this.]*

In Avra Valley, an encroachment on five percent (5%) or less of the "No Touch" zone could be considered a minimal encroachment, which is consistent with the City's Interim Watercourse Protection Development Standard. Mitigation could include enhancement measures such as revegetation incorporating water harvesting, seeding, monitoring and/or removal of non-native invasive species.

A discussion followed about the fate of other land parcels interspersed between Tucson Water lands in Avra Valley. Because this area is in unincorporated Pima County, they will be subject to set-asides by Pima County as part of its Conservation Land System. Depending on the location of the parcels, CLS set-asides range from 67% for Multiple Use Management Areas, to 80% for Special Species Management Areas, and 95% for Important Riparian Areas [note, these numbers are based on review of the CLS requirements, which occurred after the TAC meeting and corrected the TAC's assumption that set asides would range from 80 to 95%].

Ralph wondered whether, if intervening development proceeds at a higher density, the mitigation ratios required on Tucson Water lands should be reduced to correspond to the diminished habitat quality of adjacent lands. Leslie responded that FWS might take the opposite view and require a higher mitigation ratio since the diminished habitat quality of lands adjacent to Tucson Water holdings would make the remaining, undeveloped Tucson Water lands all the more important as habitat. Trevor said effectiveness monitoring might provide information on the results of this. Ralph asked that a sliding scale be looked at to address impacts of development on adjacent parcels. Leslie noted that on the east/west biological corridors, development on the uplands might result in impacts, but the riparian corridors would still be functional because of their nature as water drainages. David asked if the HCP can be amended if conditions change

substantially. A suggestion was made that in preparing the Avra Valley HCP, a review be conducted of the Clark County (Las Vegas, Nevada) HCP, which might address this as an unforeseen circumstance and assess the risk of mitigation requirements going either up or down based on changes in adjacent land use.

Trevor then addressed BUOW, saying we need to plan for these since their habitat preferences typically do not include riparian areas. We need to see if it is appropriate to overlay “No Touch” zones on potential BUOW habitat, or ensure that some portions of BUOW habitat are protected as part of the “No Touch” mapping effort.

4. Topics at upcoming meeting

See notes above about joint meeting with Marana HCP group.

5. Call to audience

No members of the public were present at the meeting.

6. Adjournment

Note: Upcoming meeting dates include September 19, October 17, November 7, and December 5.